IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1491 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

and

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUSTAQ YUNUS MEMON BROTHER OF DETENU MUNAF @ CHAKLI YUNUS M.

Versus

STATE OF GUJARAT

Appearance:

MR ANIL S DAVE for MR RS SANJANWALA for Petitioner

MR KC SHAH APP for Respondent-State.

MR KIRAN JANI - Intervener.

CORAM : MR.JUSTICE M.S.PARIKH

and

MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: /07/2000

CAV JUDGEMENT (PER : MS. DOSHIT J.)

This petition arises from an order of preventive detention dated 19th August, 1993, made by the Commissioner of Police, Surat City, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985.

The petition has been placed before us on a Reference made by the Division Bench comprising of Hon'ble Mr.Justice Sushant Chaterjee and Hon'ble Mr. Justice A.N.Divecha (as they then were). The facts leading the present Reference are as under :

The above referred order of preventive detention was challenged before this court in the present writ petition preferred under Article 226 of the Constitution of India. Amongst several grounds, it was contended that along with the grounds of detention, the petitioner was not supplied all the relevant and material documents thereby depriving him of a fair chance of making an effective representation against the impugned order. It was contended that the subjective satisfaction recorded by the Detaining Authority was based, interalia, upon several criminal cases pending trial against the petitioner. In course of investigation of the criminal cases, certain evidences were collected against the accused persons including the petitioner and also the chargesheets were filed in the trial court. Though the factum of pending criminal cases was taken into consideration, the evidence collected in course of investigation including the statements recorded under section 161 CRPC were not supplied to the petitioner-detenu along with the grounds of detention. The order of detention, being violative of Article 22 (5) of the Constitution was vitiated. In support of this contention, the petitioner had relied upon the judgment of the Division Bench of this court in the matter of SMT. DEVUBEN GOVINDBHAI VANKAR VS COMMISSIONER OF POLICE,

SURAT CITY (Special Criminal Application No. 253/93, decided on 3rd/4th August, 1993, Coram : K.G.Shah & K.R.Vyas JJ). The contention was opposed by the respondents and reliance was placed on the judgment of another Division Bench of this court in the matter of DAHYABHAI DANJIBHAI ANJARA VS COMMISSIONER OF POLICE, SURAT CITY (Special Criminal Application No. 1776/92, decided on 17th August, 1993, Coram : S.D.Shah & R.D.Vyas JJ). It has been stated in the referring judgment that both the said Benches have expressed conflicting views on the matter at issue.

The question that might accordingly arise for consideration is-

" Whether in case of preventive detention, where the subjective satisfaction is based on the pending criminal cases in which the chargesheets have been filed in the trial court and the copies of the chargesheets and the accompanying materials have been served upon the accused-detenu under section 173 (5) CRPC , the detenu shall again be supplied with the copies of the said chargesheets and the accompanying materials along with the grounds of detention and whether non-supply of such documents/materials shall vitiate the order of detention. "

However, as recorded hereinabove, the order of detention was made on 19th August 1993 , and since no relief was granted to the petitioner, he has completed the term of detention. Hence, the matter at issue has clearly become academic. It is settled law that academic questions need not be decided. Hence, in the facts of the present case, we deem it just and proper to declare Reference having become infructuous and the question having been rendered academic.

The Reference is answered accordingly. As observed hereinabove, the petitioner has served the term of detention. The matter has, therefore, become infructuous and is disposed of accordingly. Rule is discharged.

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JOSHI